



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

Docket No. [USCG-2020-0658]

RIN 1625-AA09

**Drawbridge Operation Regulation;** Indian Creek, Miami Beach, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

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**SUMMARY:** The Coast Guard is changing the operating schedule that governs the 63<sup>rd</sup> Street Bridge, across Indian Creek, mile 4.0, at Miami Beach, FL. A request was made to place the drawbridge on a weekend operating schedule to assist with alleviating vehicle congestion due to on demand drawbridge openings. This change extends the operating schedule to the weekend, so that openings on the hour and half-hour will be required every day of the week, except Federal Holidays.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>. Type USCG-2020-0658 in the “SEARCH” box and click "SEARCH. In the Document Type column, select “Supporting & Related Material.”

**FOR FURTHER INFORMATION CONTACT:** If you have any questions on this rule, call or e-mail Ms. Jennifer Zercher, Bridge Management Specialist, Seventh Coast Guard District, telephone 305-415-6740, email [Jennifer.N.Zercher@uscg.mil](mailto:Jennifer.N.Zercher@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

## **I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
§	Section
U.S.C.	United States Code
FL	Florida
FDOT	Florida Department of Transportation
LNM	Local Notice to Mariners

## **II. Background Information and Regulatory History**

On December 3, 2020, the Coast Guard published a Test Deviation, with a request for comments, entitled Drawbridge Operation Regulation; Indian Creek, Miami Beach, FL, in the Federal Register (85 FR 77994), to test this operating schedule for the 63<sup>rd</sup> Street Bridge. Thirty one comments were received during the test period and those comments were addressed in the NPRM.

On April 12, 2021, the Coast Guard published a Notice of Proposed Rulemaking entitled Drawbridge Operation Regulation; Indian Creek, Miami Beach, FL in the Federal Register (86 FR 18927). There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to this regulatory change. During the comment period that ended May 27, 2021, we received one comment which is addressed in Section IV of this Final Rule.

On June 24, 2021, the Coast Guard reopened the comment period in the Federal Register (86 FR 33153). There we stated why we reopened the comment period and invited comments on our proposed regulatory action related to this regulatory change. During the comment period that ended July 26, 2021, we received three hundred and thirteen comments, and those comments are addressed in Section IV of this Final Rule.

## **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority 33 U.S.C. § 499.

The 63<sup>rd</sup> Street Bridge across Indian Creek, mile 4.0, at Miami Beach, FL, is a double-leaf bascule bridge with an 11 foot vertical clearance at mean high water in the closed position. The operating schedule for the drawbridge is set forth in 33 CFR § 117.293. Navigation on the waterway is commercial and recreational.

A private citizen, with the support from the bridge owner, Florida Department of Transportation (FDOT), requested the Coast Guard consider placing the drawbridge on a weekend operating schedule to assist with alleviating vehicle congestion due to on demand bridge openings. The bridge currently operates on a schedule during the weekdays. This change extends the operating schedule to the weekend. Openings on the hour and half-hour will be required every day of the week, including Saturday and Sunday.

#### **IV. Discussion of Comments, Changes and the Final Rule**

During the NPRM and the reopening of the NPRM comment period, three hundred and fourteen comments were received. One hundred and forty seven comments were in support of the proposed change but did not provide additional recommendations or opinions.

One hundred and nineteen comments were in support of the proposed change but requested additional restrictions be placed on the operation of the drawbridge. The additional restrictions included allowing the drawbridge to only open four times a day, only open once an hour, allow the drawbridge to remain closed to navigation at all times, limit the amount of time the drawbridge remained in the open to navigation position, extending the hours of the proposed schedule and removing the on demand openings completely. The Coast Guard recognizes that when the drawbridge opens to marine traffic, there is an interruption in vehicle traffic flow. However, the traffic congestion in the area surrounding the 63<sup>rd</sup> Street Bridge is not solely the result of the drawbridge's operation. We have the responsibility to ensure that drawbridges are operated so that

they are a minimum obstruction to waterway traffic while taking into account all modes of transportation. In order to help reduce motor vehicle traffic delays and congestion, the Coast Guard has authorized the drawbridge to operate on a schedule during weekdays, and now have authorized the drawbridge to operate on this proposed weekend schedule. We made the determination that adding restrictions beyond the proposal will not meet the reasonable needs of navigation for this waterway. Vessels have only one way to transit through Indian Creek at this location. Other modes of transportation have alternate routes to travel around this waterway.

Six comments were received against the proposed weekend schedule. The commenters felt that the drawbridge is restricted enough during the weekday and boaters should continue to be able to request weekend openings on demand. The Coast Guard feels it reasonable to place the drawbridge on a weekend operating schedule to assist in alleviating vehicle congestion in the area.

Thirty four comments were received but did not provide an opinion on the proposed operating schedule. The comments were directed toward overall traffic congestion, roadway design, an increase in charter vessels, vessel wakes, noise from charter vessels, and general comments on the drawbridge not associated with the proposed operating schedule. The Coast Guard will provide these comments to the appropriate agency that has enforcement authority.

Six comments were duplicate entries and addressed above. Two were blank entries providing no opinions.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protesters.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the ability that vessels can still transit the drawbridge during the scheduled openings. Additionally, vessels capable of transiting the waterway without an opening may do so at any time.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. §§ 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received zero comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the drawbridge may be small entities, for the reasons stated in Section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who

enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

### *D. Federalism and Indian Tribal Government*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### *E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a state, local, or

tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges and is categorically excluded from further review, under paragraph L49, of Chapter 3, Table3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

## **PART 117—DRAWBRIDGE OPERATION REGULATIONS**

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR § 1.05-1; and Department of Homeland Security Delegation No. 0170.1.

2. Amend § 117.293 by revising the introductory text and paragraph (a) to read as follows:

### **§ 117.293 Indian Creek.**

The draw of the 63<sup>rd</sup> Street Bridge across Indian Creek, mile 4.0 at Miami Beach, FL, shall open on signal except that:

- (a) Each day from 7 a.m. to 7 p.m., except Federal holidays, the draw need open only on the hour and half-hour;

\* \* \* \* \*

Dated: March 17, 2022.

Brendan C. McPherson  
Rear Admiral, U. S. Coast Guard  
Commander Seventh Coast Guard District

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